IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9443 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHULBHAI VINODBHAI RAJYAGURA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. District Magistrate, Bhavnagar, passed an order on 18th August, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the PASA Act.

2. The detaining authority considered two offences registered against the detenu in the grounds of detention. The authority also considered statements of three anonymous witnesses and on being satisfied about

the genuineness of the fear expressed by the witnesses qua the petitioner in respect of their personal property, the detaining authority exercised powers under Section 9(2) of the PASA Act and claimed privilege of not disclosing identity of these witnesses. The detaining authority considered possibility of resorting to less drastic remedies and came to a conclusion that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his activities of a bootlegger, which are detrimental to public order.

3. The detenu/petitioner has challenged the order of detention on various counts. However, Mr. Prajapati, learned advocate appearing for the petitioner, has restricted his arguments on the ground of non-supply of relevant documents. He submitted that the detaining authority has taken into consideration an offence registered against the detenu with Bhavnagar "C" Division Police Station, vide C.R. No.607 of 1998 under the Bombay Prohibition Act. The detaining authority has supplied relevant papers, but has not supplied copy of the bail application and, therefore, the detenu's right of making an effective representation is infringed. This would vitiate the detention. Mr. Prajapati submitted that the detaining authority has not responded to a representation dated November 23, 1999, demanding copy of this bail application and, therefore also, the detention order may be quashed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He has placed reliance on the affidavit in reply, wherein it has been contended by the detaining authority that all relevant papers have been supplied. However, he had to be candid about the fact that bail application in respect of C.R. lNo.607 of 1998 of Bhavnagar "C" Division Police Station has not been supplied.

5. Considering rival side contentions, it is factually not disputed that bail application in respect of C.R. No.607 of 1998 has not been supplied to the detenu with the grounds of detention. This copy has not been supplied even after a specific demand raised by the detenu in representation dated 23rd November, 1999. Non-supply of this materially relevant document relied upon by the detaining authority has resulted into infringement of right of the detenu of making an effective representation and has, therefore, rendered the detention illegal. The affidavit in reply simply states that all relevant documents are supplied. This type of

blanket contention cannot help the detaining authority when it is demonstrated before this Court that a relevant document has not been supplied. The petition, therefore, deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated 18th August, 1999 is hereby quashed. The detenu-Mehulbhai Vinodbhai Rajyaguru is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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